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Via E-Mail and U.S. Mail

August 20, 2014

Alice Yeh
Remedial Project Manager
United States Environmental Protection Agency, Region II
290 Broadway
New York, NY 10007-1866

Re: Sediment Management Work Group Comments On Proposed Plan For The Lower Eight Miles Of The Lower Passaic River Part Of The Diamond Alkali Superfund Site (the "Proposed Plan")

Dear Ms. Yeh:

The Sediment Management Work Group ("SMWG") is an ad hoc group of a diverse cross-section of industry (auto, aerospace, chemical, paper, paint, pharmaceutical and utilities, among others), port authorities and government parties actively involved in the evaluation and management of contaminated sediments on a nationwide basis. The SMWG has long advocated a national policy addressing contaminated sediment issues that is founded on sound science and risk-based evaluation of contaminated sediment management options. U.S. EPA's 2005 *Contaminated Sediment Guidance for Hazardous Waste Sites* ("Guidance") was an important first step in that direction. The next key step is uniform and consistent application of the Guidance. The SMWG, as part of the next step, is monitoring whether and how the Guidance is being applied at contaminated sediment sites around the country.

The SMWG previously submitted comments to the National Remedy Review Board ("NRRB") on the Lower Passaic River Restoration Project Draft Source control Early Action Focused Feasibility Study ("FFS") in 2007. The Proposed Plan is similar to the FFS in that neither document provides a meaningful evaluation of a full range of remedial alternatives, which is contrary to the National Contingency Plan ("NCP"). Moreover, like the FFS, the Proposed Plan does not comport with the *11 Risk Management Principles for Contaminated Sediment Sites* (U.S. EPA 2002a) nor the Sediment Guidance. The Proposed Plan's inconsistency with the NCP and national sediment policy, as embodied in the Sediment Guidance, concerns the SMWG because these regulations and policies are in place to ensure that site investigations are appropriately scoped, and that the evaluation and selection of remedial

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alternatives are risk-reduction focused and effectively protect human health and the environment, all in a consistent manner at all contaminated sediment sites.

In this instance, SMWG is very concerned with the direction that the Lower Passaic River Proposed Plan appears to be heading. As proposed by U.S. EPA, this would be the largest sediment removal project in the United States, with an estimated removal of 4,300,000 cubic yards of material. As U.S. EPA notes in the Proposed Plan, 3% of all contaminated sediment dredged would be released back into the waterway, would require thousands of bridge closings, would increase truck traffic in numerous communities, and would expend \$1 billion to \$2.5 billion of funds to implement a flawed clean-up plan that fails to provide any material sustainable risk reduction. Consequently, the SMWG recommends that the Proposed Plan be withdrawn.

The following summarizes our primary concerns with the failure of the Agency's Proposed Plan to follow its own Guidance as well as concerns raised by other governmental experts. Greater detail is included in the body of this document.

1. As a threshold issue, the Proposed Plan is premature and is inconsistent with CERCLA process and the NCP because it the Agency's site characterization is inadequate. It substantially relies on old and incomplete data, despite the availability of significantly more recent detailed data that is now available from the Cooperating Parties Group (CPG) Remedial Investigation work that cost over \$100 million. Moreover, the CPG's RI/FS will be submitted to the Agency in the near future and it should form the basis of the Agency's evaluation of remedial alternatives and selection of a remedy.
2. U.S EPA's National Contaminated Sediment Policy is embodied in the Sediment Guidance which is intended to be applied nationally in a consistent manner to minimize risks associated with sediment cleanups. Failure to adhere to the Sediment Guidance not only creates uncertainty by undermining national consistency in sediment remedy decisions, but also threatens to create unnecessary risks that the Sediment Guidance is designed to avoid. The Proposed Plan, unfortunately, is inconsistent with the Sediment Guidance.
3. The Proposed Plan significantly deviates from the NCP, the Sediment Guidance and the Eleven Sediment Management Principles in a number of ways including the fact that the FFS and Proposed Plan fail to adequately identify and factor in substantial ongoing sources in the River, as is required by the Sediment Guidance and U.S. EPA's national policy. Thus, recontamination is likely to occur.

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4. EPA is basing many decisions on a transport model that has not been peer reviewed, applies unsupported input factors and is not fully suitable to the site. EPA's own internal experts (NRRB/CSTAG) have raised this concern to the Region, however to date the Agency has failed to make substantive changes to support the remedy.
5. The clean-up goals and risk criteria are based on a conservative screening level Risk Assessment and the Agency has failed to conduct a site-specific Baseline Risk Assessment as required by the NCP and U.S. EPA's own Superfund Guidance.
6. The Proposed Plan inadequately develops and inappropriately evaluates the potential remedial alternatives in contravention of the NCP, the CERCLA RI/FS process and the Sediment Guidance.
 - The FFS and Proposed Plan fail to properly evaluate the potential adverse impact on remedy effectiveness posed by the risks resulting from the inevitable resuspension and release of Chemicals of Concern which occur during all dredging projects.
 - Based on experience from the interim dredging actions previously implemented (the Lister Avenue and River Mile 10.9 dredging projects), numerous bridges and submerged utilities would negatively impact the implementability of the Proposed Plan remedy and should be evaluated prior to selection of a remedy.
 - The existence of numerous bridges and submerged utilities would dramatically adversely impact the implementability of the Proposed Plan remedy and this impact should be evaluated prior to selection of a remedy. In addition, because of the age of the bridges, the likelihood of malfunctions and failures are high. This was evidenced by the substantial bridge malfunctions which shut down the River Mile 10.9 dredging project numerous times and the significant disruption of the heavy metropolitan area's vehicle traffic. Such malfunctions in a full scale multi-year dredging project would result in major disruption of water and land transport and traffic, not to mention the significant delays in completing the dredging.
 - Submerged debris and obstructions were not appropriately evaluated as part of the Proposed Plan's implementation.

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- The Proposed Plan's geotechnical assessment of issues relating to bridge abutments, bulkheads and slope stability, among others, is incomplete and unreliable.
- The Proposed Plan fails to evaluate the comparative net risk reduction potential of the alternatives, pursuant to Section 7.4 of the Sediment Guidance.
- The Proposed Plan inappropriately rejects the use of a confined aquatic disposal ("CAD") facility for disposal of the massive proposed dredging volume. Despite its potential unpopularity, a CAD would result in a significant cost savings (estimated to be \$700 million).
- The Proposed Plan inappropriately includes navigational dredging beyond the scope of CERCLA that increases the potential cost of the project by an estimated \$850 million.
- The Proposed Plan inappropriately attempts to set cleanup standards below anthropogenic background, contrary to CERCLA, the NCP, the Sediment Guidance and long-established U.S. EPA policy.
- U.S. EPA failed to propose a phased or adaptive management approach, even though a site with such complex circumstances as the LPRSA is considered conducive to those approaches.
- An analysis of the Proposed Plan under the NCP's Nine Remedy Selection Criteria results in the conclusion that the Proposed Plan is inconsistent with those requirements and should be withdrawn in favor of the soon to be completed LPRSA RI/FS. In particular, the shortcomings of the Proposed Plan include failure to meet the following NCP criteria: overall protection of human health and the environment, long-term and short-term effectiveness, implementability and cost effectiveness.

In conclusion, rather than following the CERCLA RI/FS process and despite the availability of the LPRSA RI/FS in a few months, U.S. EPA proposes to disregard this \$100 million dollar effort in apparent unfounded need for speed. A review of the Proposed Plan against the NCP Remedy Selection Criteria and the Sediment Guidance clearly reveals that it fails to comply with the basic requirements of these documents. In light of the imminent release of the RI/FS and the Proposed Plan's significant inconsistencies with CERCLA, the NCP, and National Sediment Policy, as embodied in the Sediment Guidance, the Proposed Plan should be

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withdrawn and the Site should follow the CERCLA RI/FS process at this time. This should involve evaluating remedial alternatives and selecting the appropriate remedy for the Site following receipt and review by the Agency of the RI/FS.

The Agency should also consider the CPG's Conceptual Sustainable Remedy because it appears to hold great promise in being fully consistent with the NCP and Sediment Guidance. Moreover it is a potentially workable approach, utilizing sustainable and adaptive management principles to address this complex site.

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The SMWG would be pleased to answer any questions about its comments on the draft FFS. For further information, please feel free to contact the SMWG's Coordinating Director, Steven C. Nadeau, c/o Honigman Miller Schwartz and Cohn LLP, 2290 First National Building, 660 Woodward Avenue, Detroit, MI 48226, (313) 465-7492, snadeau@honigman.com.

Sincerely,

Steven C. Nadeau

Steven C. Nadeau, Coordinating Director
Sediment Management Work Group

Enclosure

c.

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